))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2137 of 1983 with Cross Objections No.37 of 2002
with

FIRST APPEAL No 168 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALAJKI TRADERS

Versus

WOOD PAPER LTD

Appearance:

1. First Appeal No. 2137 of 1983
MR JP RAVAL for Appellant No. 1
MR MI PATEL for Respondent No. 1

2. First Appeal No. 168 of 1984
MR MI PATEL for Appellant No. 1
MR MI PATELfor Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. Both the appellants have challenged the composite judgment and order dated 30.7.1983 passed by the learned Civil Judge, Senior Division, Navsari in Special Civil Suit No. 8 of 1979 and Special Civil Suit No.24 of 1981. M/s Wood Papers Limited, the appellant in First Appeal No.168 of 1984 is the plaintiff in both the suits while M/s Balaji Traders, the appellant in First Appeal No.2137 of 1983 is the sole defendant of Special Civil Suit No.8 of 1979 and the defendant no.2 in Special Civil Suit No.24 of 1981. The learned trial judge in Special Civil Suit No.8 of 1979 ordered that the plaintiff do recover Rs. 1,46,350.51 from the defendant with proportionate costs of the suit and interest at the rate of 18% p.a. from the date of the suit till realisation.

2. The learned trial judge, however, dismissed Special Civil Suit No.24 of 1981 against both the defendants. The original defendant of Special Civil Suit No. 8 of 1979 has filed First Appeal No. 2137 of 1983 while the original plaintiff M/s Wood Papers Limited has filed First Appeal No. 168 of 1984 challenging the judgment and order passed in Special Civil Suit No. 24 of 1981. For the sake of brevity, we will also refer the parties as plaintiff and defendant.

3. Since the facts of both the appeals are interlinked with each other, both the suits were heard together and decided by common judgment. We are also disposing of both the appeals by common judgment.

4. Special Civil Suit No.8 of 1979:

Special Civil Suit No.8 of 1979 was originally filed by Arvind Boards and Paper Products Ltd. of Billimora against M/s Balaji Traders of Bangalore to recover Rs. 1,71,880.24 along with interest at 18% p.a. It appears that pending the suit, the name of the plaintiff- company was changed to "Wood Papers Limited" and, therefore, the plaint was amended accordingly. The plaintiff company manufactures craft papers and straw

boards and the defendant who also deals in straw boards and craft papers at Bangalore, purchased goods from the plaintiff company and agreed to pay the price of the goods at Billimora within a stipulated period of 89 days and agreed to honour the Hundies sent by the plaintiff within 89 days. It is also the case of the plaintiff that the defendant had agreed to pay interest at 18% p.a. As per the orders placed by the defendant, the plaintiff supplied goods and sent bills giving details of price interest, taxes etc. and the amount due was debited to the account of the defendant in the books of accounts of the plaintiff company. It is further the case of the plaintiff that the plaintiff supplied goods worth Rs. 1,95,299.58 and the plaintiff had drawn Hundies to be paid by the defendant, the details of which are given in the plaint. The defendant is said to have not paid the amount of these Hundies or enhanced excise duty and crediting the amount paid, the amount of Rs. 1,71,900.32 is said to be due from the defendant to the plaintiff and that not having been paid in spite of repeated demands, the plaintiff company filed the suit to recover Rs. 1,71,880.24 towards principal amount, Rs. 37,649.47 towards interest at the rate of 18% p.a. up to 31.12.1978 and Rs. 50/- of notice charges and, therefore, the total claim was for Rs. 2,09,579.71 with interest at the rate of 18% p.a. from the date of the suit till realisation together with costs of the suit.

5. The defendant M/s Balaji Traders filed written statement Ex. 10 wherein the contentions regarding jurisdiction, insufficiency of court fee stamps, suit being bad for misjoinder and non joinder of parties were raised. The defendant denied its liability to pay the amount of Hundies within 189 days and to pay the interest at 18% p.a. as claimed in the suit. The defendant also denied the liability to pay Rs. 1,71,880.32 or any other amount. The defendant also came out with a case that it was doing the business of straw boards and craft papers and one firm named M/s Qualipac of Bangalore was indebted to the defendant to the tune of Rs. 85,350.30. It is contended by the defendant that the plaintiff directly wanted by way of advance and also towards price of goods some thousands of rupees from the defendant and, therefore, the defendant, with a view to facilitate, agreed to authorise the plaintiff to collect and recover said dues of advance from M/s Qualipac and subsequently, the defendant wrote a letter of authority in favour of plaintiff authorising it to collect the said amount of Rs. 88,350.30 from M/s Qualipac and also handed over the letter in this regard to the plaintiff. The plaintiff thereafter started supplying goods to defendant and

collected greater portion of the said dues from M/s Qualipac and adjusted it in the accounts. It is stated that the amounts collected from M/s Qualipac by the plaintiff were not given credit to the defendant. Having obtained the letter of authority by the plaintiff from the defendant to collect the amount of Rs. 88,350.30 from M/s Qualipac, the plaintiff had no authority to demand this amount from the defendant. The plaintiff having agreed to recover this amount from M/s Qualipac and having agreed to give credit for this amount, had failed to give this credit and, therefore, the plaintiff is not entitled to claim this amount from the defendant. The defendant also claimed to be acting as Commission Agent for the plaintiff for straw boards, craft papers and other products for Bangalore region and other South Indian territory and claimed that on all the orders secured by the defendant for the plaintiff, the plaintiff had to give business commission of 7.5% on the basic invoice value and had also issued confidential statements of price structure and the amount of compensation at that rate for orders fulfilled through the defendant which came to Rs. 36000/-. This amount of commission was to be paid by way of credit notes at the end of every six months i.e. from January to June and from July to December. The plaintiff had failed to pay this amount or issue credit notes for the commission amount of Rs. 36000/- and also failed to account for it and, therefore, the defendant was entitled to recover and/ or claim credit of this amount of Rs.36000/- against the suit claim and the goods supplied by the plaintiff to the defendant. It was also contended that on account of non failure to supply E-1 form, the plaintiff was to bear additional burden of 6% sales tax which came to Rs. 65000/- and, therefore , the defendant claimed adjustment of this amount against the claim of the plaintiff in the suit. the defendant claimed in all Rs. 1,89,350.30 together with interest at 6% p.a. and prayed for dismissal of the suit.

6. Special Civil Suit No.24 of 1981:

The plaintiff M/s Wood Papers Limited filed a suit to recover Rs. 1,10,000/- against M/s Qualipac and M/s Balaji Traders as defendants no. 1 and 2 respectively. By narrating the facts as stated above, it is contended that the defendant no.2 Balaji Traders used to purchase goods from the plaintiff and a big amount was found due towards defendant no.2 on or about 12.6.1978 and the defendant no.1 had a discussion with one Mr. Anil Roy, the representative of the plaintiff company when the defendant no.1 agreed to pay Rs. 88,350.30 to plaintiff on behalf of defendant no.2 and the defendant

no.1 had further agreed to send letter to that effect to the plaintiff which was accordingly sent on 12.6.1978 by which the defendant no.1 had agreed to pay up Rs. 88,350.30 by instalments and interest to the plaintiff. This suit was, therefore, filed to recover the said amount. It is the case of the plaintiff that the plaintiff demanded the amount due from the defendant when the defendant no.1 had paid only Rs. 13000/-by two-three instalments and debited the said amount from the amount of Rs. 88,350.30 agreed to be paid by the defendant no.1. The amount of Rs.75,350.30 was due from the defendant no.1 who failed to pay this amount and, therefore, Special Civil Suit No. 8 of 1979 was filed against M/s Balaji Traders and because the defendant in that suit took up contention about M/s Qualipack agreeing to pay Rs. 88,350.30 to the plaintiff on behalf of Balaji Traders that this suit to recover the said amount of Rs. 88,35030 less Rs. 13,000/- i.e. Rs. 75,350.30 along with interest at the rate of 18% p.a. came to be filed from the responsible defendants. It is the contention of the plaintiff that if it was held in Special Civil Suit No. 8 of 1979 that M/s Balaji Traders was not entitled to pay the said amount, then the question of limitation for recovering that amount from M/s Qualipack would arise and, therefore, the present suit was filed to recover Rs. 75,350.30 along with interest at the rate of 18% p.a. from the defendants or any responsible defendant. The plaintiff claimed Rs. 75,350.30 as an amount agreed to be paid by the defendant no.1 together with Rs. 37,976.65 towards interest at the rate of 18% p.a. till the filing of the suit and deducting the amount of Rs. 3326.95 as not claimed from the total amount of Rs. 1,13,326.95 filed this suit to recover the amount of Rs. 1,10,000/- in the suit.

7. The defendant no.1 M/s Qualipack was duly served. However, since no appearance was filed, the suit proceeded ex-parte against the said defendant. The defendant no.2 M/s Balaji Traders filed written statement Ex. 19 inter alia contending that the suit was barred by the principle of res judicata and also bad for claiming the same amount by filing two separate suits. It was also contended that the defendant no.2 having no privity of contract with the plaintiff and the said plaintiff having accepted the responsibility and/or Havala to the tune of Rs. 88,350.30 and having acted upon such agreement by recovering Rs. 13,000/- from the defendant no.1 that defendant no.2 was not liable for the suit claim and was also not a necessary party to the suit. It also denied its liability to pay interest as claimed in the suit.

8. The necessary issues were framed on the basis of pleadings in both the suits. The learned trial judge, after appreciating the oral as well as documentary evidence on record, passed the judgment and decree, details whereof are given in the earlier paras. Hence these appeals.

9. Learned Counsel Mr.J.P.Raval appearing for the appellant M/s Balaji Traders raised only one contention, namely that the learned judge could not have passed decree with respect to the payment of Rs. 88,350.30 against the appellant. In the submission of learned advocate, the plaintiff prayed for a decree of Rs. 1.10 lacs out of which the principal amount of Rs. 75,350/was claimed and the remaining amount was claimed by way of interest. According to the learned Counsel, the plaintiff of the said suit has clearly averred that the defendant no.1 i.e. M/s Qualipack had agreed to pay Rs. 88,350.30 on behalf of M/s Balaji Traders and especially when the part of the amount was also recovered from M/s Qualipack, no decree could have been passed against M/s Balaji Traders.

10. We have gone through the evidence on record as well as the reasonings given by the learned trial judge. Mr. Thakorlal H.Patel Ex. 52 who is serving with the plaintiff has been examined on behalf of the plaintiff company while Mr. Sudarshan R. Shah has been examined on behalf of M/s Balaji Traders. From the evidence on record, it is clear that the plaintiff in all has claimed Rs. 2,09,579.75. According to the plaintiff, goods worth Rs. 1,95,299.56 were delivered to M/s Balaji Traders for which six Hundies were drawn after giving credit of the amount. According to the plaintiff, an amount of Rs. 1,71,900.32 is said to be due from the defendant taking the round figure of the said amount. It appears that the plaintiff has claimed Rs.1,71,880.24. Besides that, the interest and notice charges are also claimed. The defendant, while denying the suit claim, has come out with the case that the plaintiff was in need of money and required the amount as advances and as the defendant had to recover the amount of Rs. 88,350.30 from M/s Qualipack, the defendant authorised the plaintiff to recover the amount from the said company and M/s Qualipack also agreed to pay the said amount to the plaintiff and thereafter the plaintiff delivered the goods to the defendant. In our opinion, the defendant has indirectly admitted the claim of the plaintiff and also the supply of goods as stated in the plaint. Not only that, but the defendant has also claimed set off for

Rs. 88,350.30 and for the commission due. It is not the case of the defendant that they have not received the goods for which six Hundies were issued and were not received by it. Similarly, the claim stated in the Hundies is also not in dispute. The witness Sudarshan Shah, proprietor of M/s Balaji Traders, by endorsing Hundies Ex. 62 to 67, has accepted the same. There is no dispute to the fact that the total amount of six Hundies was Rs.1,88,613.50. The rest of the amount of Rs. 6686.05 was for the amount of debit notes Ex. 10 and 25. Thus, it is clear that the defendant M/s Balaji Traders accepted by the endorsement at the back of Hundies the correctness of the amount of Hundies together with other documents like Order Confirmation letter written by the plaintiff to the agent Dena Bank, Billimora sending these Hundies for realisation of amounts and the invoices for these goods sent at Ex. 56 to 61. Ex. 71 is the noticeissued by the advocate for the plaintiff to the defendant for production of original invoices. The said notice is duly served to the learned advocate for the defendant M/s Balaji Traders, but the defendanthas failed to produce the original invoices. The learned trial judge, it appears, has exhibited carbon copies of these invoices and has accepted the correctness of the amount stated in the Hundies. Thus, it is clear that the plaintiff did sell the goods worth Rs. 1,88,693.50 to the defendant and, therefore, the plaintiff is entitled to recover the said amount from the defendant. After giving credit to the amount received from the defendant, it is the case of the plaintiff that still the amount of Rs.1,71,900.32 was due from the defendant as per debit note no. 10 and 25 Ex. 69. In our opinion, the plaintiff is legally entitled to the amount shown in the debit note no.25/78.

11. The learned trial judge has recorded a finding regarding the rate of interest and the notice charges which is common in both the suits by holding that the plaintiff has proved that the defendant had agreed to pay interest at the rate of 18% p.a. and accordingly Rs.37649.47 is due towards the interest up to 31.7.1978. Likewise, it is also held that the plaintiff has proved that he is entitled to claim Rs. 50/- as notice charges. We are in agreement with the reasonings given by the learned trial judge. Since the said finding is not challenged, it is not necessary for us to repeat the reasonings given by the learned judge.

12. The question which is required to be decided is whether the defendant has established that the plaintiff directly recovered Rs. 88,350.30 on behalf of the

defendant M/s Qualipack and whether the plaintiff has failed to give credit for the same. It is the contention of the defendant M/s Balaji Traders that the plaintiff directly recovered Rs. 88,350.30 on behalf of it from M/s Qualipack and the plaintiff has not given credit for the same. From letter Ex. 82 written by the partner of M/s Qualipack to the plaintiff on 6.12.1978 which is in respect of outstanding account, he has also referred to the personal discussion the representative of the plaintiff Mr. Anil Ray had with the partner of M/s Qualipac. The letter Ex. 82 written by M/s Balaji Traders to the plaintiff is referred to in this letter whereby M/s Qualipack had agreed to pay Rs. 88,350.30 directly to the plaintiff in instalments with interest authorising the plaintiff to recover this amount of Rs. 88,350.30 from M/s Qualipack. Merely because M/s Qualipack agreed to pay the said amount by instalments, the right to recover the said amount by the plaintiff from the defendant M/s Balaji Traders is not taken away. The plaintiff had to give credit to M/s Balaji Traders for whatever amount it received from M/s Qualipack. There is no dispute to the fact that M/s Qualipack had paid only Rs. 13,000/- and not the entire amount of Rs. 88,350.30 and, therefore, the plaintiff is certainly entitled, in our opinion, to recover the balance amount from M/s Balaji Traders. We, therefore, see no merit in the submissions advanced before us that the plaintiff is not entitled to recover any amount from M/s Balaji Traders.

13. The learned trial judge has also observed that perusing the original ledger produced by the plaintiff, it is clear that there is no direct dealing with the plaintiff and M/s Qualipack and no Havala entry has been posted by which this amount as far as the defendant M/s Balaji Traders was concerned, was written of and the defendant M/s Balaji Traders is duty bound to pay the amount due less whatever the plaintiff had received from M/s Qualipack. Suffice it to say that we are also in agreement with the said reasonings given by the learned trial judge. We, therefore, reject the contention advanced by the learned Counsel appearing for the appellant- M/s Balaji Traders.

14. Since no other contentions are advanced before us and since we are in total agreement with the reasonings and the ultimate conclusion reached by the learned trial judge, as far as rest of the issues are concerned, we see no merit in either of the appeals as well as in the Cross Objections. In our opinion,the learned trial judge was justified in dismissing the Special Civil Suit No. 24 of

1981 filed by the plaintiff M/s Wood Papers Ltd. against both the defendants and was justified in allowing the suit being Special Civil Suit No. 8 of 1979 filed by M/s Wood Papers Ltd. against M/s Balaji Traders by passing the decree to recover an amount of Rs. 1,44,315.51 from the said defendant with proportionate costs of the suit and interest at the rate of 18% p.a. from the date of the suit till realisation. We confirm the said findings. Accordingly, both the appeals together with Cross Objections stand dismissed. There shall be no order as to costs. The interim

(Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

sonar/-